S.B. CIVIL WRIT PETITION NO. 1559/1995
(SURENDRA PAL JAT GODARA VS. STATE & ORS.)

DATE OF ORDER : 19.04.2007.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Sunil Beniwal for the petitioner.
Mr. Shyam Ladrecha, AGA, for the respondents.

By this petition for writ validity, propriety and correctness of the order dated 17.10.89 passed by Superintendent of Police, Sriganganagar, order dated 16.08.90 passed by Dy. Inspector General of Police, Bikaner Range, Bikaner and the order dated 27.01.95 passed by Reviewing Authority is under challenged.

In brief, facts of the case are that the petitioner while holding the post of Constable at Police Station Suratgarh was served with a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 with definite charges as follows:

> "आप श्री सुरेन्द्रसिंह कानि० 430 थाना सूरतगढ में कानि० के पद पर तैनात थे। आप थाना में बिना किसी लिखा पढी के मुस्मात कृष्णा स्त्री रामस्वरूप के घर 9-9-1/2 बजे गये।
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> आपने मुस्मात कृष्णा स्त्री रामस्वरूप नि० वार्ड नं० 8 सूरतगढ़ का रात्री को 9-9-1/2 दरवाजा खट खटा कर खुलवाया अकेली कृष्णा

को पाकर उसके साथ घर में घुस कर छेड़छाड़ की उसके गाल पर बटका भरा तथा उसकी चुड़ीयां तोड़ दी जम्फर फाड दिया।

आप उस समय आप नशा शराब में थे तथा डाक्टरी मुआयना कराने पर आप शराब के प्रभाव में पाये गये।

आप द्वारा मुस्मात कृष्णा स्त्री रामस्वरूप के साथ छेड़छाड़ कर अपने पद का दुरूपयोग किया और पुलिस विभाग की छवी को घुल मिल किया।

आपका उक्त कर्तव्य अनुमावनहीनता कर्तव्य विमुक्त लापरवाही अक्रमव्यता उदासीनता स्वेच्छारीता का परिचालक है जो नियमानुसार दण्डनीय है।"

On denial of charges, the disciplinary authority appointed an Enquiry Officer to enquire into the charges and after enquiring, the Enquiry Officer submitted his report to the disciplinary authority along with record of the enquiry on 29.11.89. The Enquiry Officer exonerated the petitioner from all the allegations except of being having under intoxication. The disciplinary authority after considering the report of Enquiry Officer by the order dated 17.10.1989 imposed a penalty of dismissal upon the petitioner and also ordered for forfeiting of wages for the period of suspension except the subsistence allowance already paid. An appeal preferred by the petitioner giving challenge to the order dated 17.10.89 also came to be rejected by the appellate authority by the order dated 16.08.90.

A review petition thereafter preferred by the petitioner was also rejected under an order dated 27.01.95. Being aggrieved by the order passed by the disciplinary authority and further the orders of affirmence, this petition for writ is preferred.

The only contention of the petitioner is that the present one is a case of no evidence. This Court by an order dated 22.02.2007 directed the respondents to keep available record of enquiry for its examination by the Court, accordingly the same is produced for perusal of the Court by learned counsel for the respondents.

From examination of record, I found that PW-1 Smt. Krishna in specific terms denied that the delinquent employee misbehaved with her on 10.02.89. In unambiguous terms she has specifically stated that in the night of 10.02.89, the delinquent employee who was residing in her neighbourhood, came at her residence as some quarrel took place in day hours with his wife. PW-2 Shri Moti Ram a neighbour of PW-1 Smt. Krishna also stated that no misbehaviour was made by the delinquent employee with Smt. Krishna. The same statement is given by PW-3 Ramswaroop, who happens to be the husband of Smt. Krishna. Other prosecution witness Shri Shyam Lal who was also a neighbour of Smt. Krishna did not support the

prosecution case. The other prosecution witnesses PW-5, PW-6, PW-7 and PW-8 are police officials and they have simply stated that they received a complaint from Smt.Krishna and accordingly on medical examination the delinquent employee was found under intoxication. The medical report is also available on record. According to that on 10.02.89 at the time of medical examination, the delinquent employee was under intoxication. The Enquiry Officer mainly relying upon the medical report found the petitioner guilty for being under intoxication.

It is submitted by the counsel for the petitioner that the delinquent employee on basis of a complaint made by Smt. Krishna was also tried for offence under Section 451, 354 and 323 IPC, but was acquitted by the Court of Judicial Magistrate, I-Class, Suratgarh by the judgment dated 18.06.91. A copy of the judgment aforesaid is available on record as Annexure 2.

A reply to the writ petition has been filed on behalf of the respondents stating therein that though the petitioner was not found guilty for misbehaviour with Smt. Krishna, but on basis of medical report, he was found under intoxication and that is sufficient to penalize a member of disciplined force.

On asking, learned counsel for the respondents failed to satisfy the Court that on 10.02.89 at the time of happening of alleged incident, whether the petitioner was on duty.

Heard counsel for the parties.

From perusal of the record and examination of the statements given by the prosecution witnesses, it is established that there is no evidence on basis of that it could be said that the delinquent employee misbehaved with Smt. Krishna. The Enquiry Officer, therefore, rightly exonerated him from the charge No.1. Precisely the question is that as to whether the delinquent employee at the relevant time was under intoxication and if so whether that amount to any misconduct. From perusal of the medical report which is a part of the enquiry, I am having no doubt that the delinquent employee at the time of his medical examination was under intoxication, however, it is not at all established that at that time he was on duty. If a government servant is under intoxication but the area concerned is not a prohibited area then the consumption of liquor is no misconduct. The petitioner in the night of 10.02.89 being not on duty have not committed any misconduct by consuming liquor. In view of it, even by establishment of fact that in the night of 10.02.89,

the delinquent employee was under intoxication, he could not be held guilty of any misconduct. The disciplinary authority and the appellate authority as well as the reviewing authority have not considered this aspect of the matter.

In view of whatever discussed above, this petition for writ deserves acceptance, the same, therefore, is allowed. The order passed by the disciplinary authority dated 17.10.89, therefore, is quashed. All consequential orders affirming the order dated 17.10.89 are also hereby quashed. The respondents are directed to restore the position of the petitioner as it was prior to 17.10.89. The petitioner shall also be entitled for all consequential benefits flowing as a consequence to the directions made above.

No order to cost.

(GOVIND MATHUR)J.

Anil/